

Mr. Cobb asked if there were any questions for staff or was there anything that the applicant would like to add.

Alan Rapoport, 1567 Compton Road, introduced himself, stated that he was the last mayor of the old City Hall of Cleveland Heights and the first mayor of the current City Hall of Cleveland Heights. He stated how important it is to designate and keep the cultural significance of the historic City Hall entranceway and why this should be granted as a historic Landmark in the City of Cleveland Heights. He add that this is a reminder of what the community was and the what the community will be in it continued growth and expansion, especially with the development of the "Top of the Hill" project.

Mr. Cobb added that there is a letter that was entered into the record that then Mayor Rapoport had written on December 1985, in regards to the Landmark.

Alan Rapoport stated that the letter in question was in regards to the Landmark Commission granting that the structure of the old City Hall be marked as a Landmark. He said that he was asked by the council at that time that that discussion be revoked because they were in the process of putting the property on the market for sale. The Landmark Commission didn't have permission from the owner at that time, and allowed for the revocation to stand. Mr. Rapoport stated that the building was constructed with idea of keeping the historic entrance and was approved by the Architectural Board of Review at that time.

Mr. Cobb asked if there were any questions or if there was anyone from the public that would like to comment. Mr. Cobb then asked if anyone would like to make a motion.

Michael Gaynier motioned that the Planning Commission recommended that historic City Hall remnant be declared a Cleveland Heights Landmark per Code ch. 143 & 1111.

Mr. Mattox, Jr. seconded the motion.

Mr. Cobb asked if there need to be in further discussion. There was none and the motion passed, 5-0-1 with Mr. Howe abstaining.

Project No. 18-21: Chaviva High School for Girls, 3300 Mayfield (Park Synagogue), 'A' single-fam., request conditional use permit for 10-classroom high school per Code ch. 1111, 1115, 1121, 1151, 1153, 1161, 1163 & 1166.

Ms. Hamley O'Donnell explained that the current uses of the building and explained that the applicant is looking to use ten classrooms in the Park Synagogue for a high school for girls. She asked that the staff report for Project 18-21 be entered into the public record and stated that the Standards for Conditional Uses and staff commentary are included in the staff report. Ms. Hamley O'Donnell stated that they believe that this use is in keeping the general standards for conditional uses, their parking is more than adequate, and we encourage adaptive reuse of buildings. Staff recommends that the Planning Commission approve a conditional use permit for Chaviva High School for Girls to operate a 10-classroom high school at Park Synagogue, 3300 Mayfield Road, as described in their application materials and this report, with the following additional conditions:

1. Applicant return to the Planning Commission for approval of any significant alteration or expansion of their operations; and
2. Applicant shall work with staff to resolve any neighbor complaints.
3. That they should implement these standards within 18 months of Planning Commission Approval.

Mr. Cobb asked if there were any questions for staff and there were none. He then asked if there was anything that the applicant would like to add.

Benjamin Hoen, 3416 Superior Park Drive, introduced himself and confirmed that he had taken the oath or affirmation. He explained that with the growing community comes the need for a new school, and when they saw an opportunity to use the space that was available with the Park Synagogue, they went forward with the idea. He further explained the benefits of the school to the growing community.

Mr. Cobb asked if there were any questions from the applicant and there were none so he asked if anyone from the public had questions.

Annie L. Moore, 1655 Ivydale Road, introduced herself. She explained that her property is attached to the synagogue with a fence separating the two. She wanted to know how having the school would affect the residents and if this would this have any effect on property taxes. Mrs. Moore asked for a better understand as why a new high school was needed, considering that the Cleveland Heights High School was recently remodeled. She said the property is currently not maintained and wanted to know what was the city plan was. She expressing her concerns about her zoning and how it was classified--was it commercial or residential?

Mr. Cobb explained to Mrs. Moore that staff will address her concerns.

Mr. Rink reassured Mrs. Moore that all of her questions will be answered by either staff or the council. She thanked Mr. Rink and added that as long as the new school wasn't going to affect her financially, she was fine.

Mr. Cobb asked Mrs. Moore to show her home on the map.

Ms. Hamley O'Donnell addressed the issue of maintenance of the Synagogue which is the responsibility of Park Synagogue. Ms. Hamley O'Donnell then addressed Mrs. Moore's question of zoning, making her aware that her property, as well as Park Synagogue, was classified as single-family residential and that most the city's churches, schools and synagogues are located in residential districts. Park Synagogue and other religious buildings are usually tax exempt. Ms. Hamley O'Donnell concluded that the new school should have no effect on her current property taxes due this being a private establishment.

Mr. Cobb adds that the bulk of her taxes are due to school levies.

Mr. Rink asked Mrs. Moore if she understood that there will be no new taxes, said that staff will work with the Synagogue to improve on the maintenance of the property.

Ms. Rothenberg asked that Mrs. Moore give her information the Christy Lee for updates with her concerns.

Mr. Cobb asked the applicant if they wanted to add anything to address Mrs. Moore's concerns and they did not. He asked if Mrs. Moore or others in the audience had any other questions. There were none.

Mr. Horowitz motioned approval for Project No. 18-21, Chaviva High School for Girls, 3300 Mayfield Road for 10-classroom high school per with staff's three recommended conditions.

Mr. Howe motioned to second the approval which passed, 6-0.

Project No. 18-24: Noble Roman, Inc., 2610 Noble, C2 Local Retail, requests expansion of conditional use permit to operate entire building as merchandise sales area/mini mart w/ liquor sales in conjunction w/ existing gas station per Code ch. 1111, 1115, 1131, 1151, 1153, 1161, 1163 & 1166.

Mr. Cobb said, "Next item on the agenda is Project 18-24: Noble Roman, Inc., 2610 Noble.

Is this the same project that was before us...?"

Ms. Rothenberg interjected, "In August."

Mr. Cobb continued, "...and withdrawn in August?"

Ms. Hamley O'Donnell said, "They withdrew in August and resubmitted a new application."

Ms. Rothenberg added, "[They were] the same applicant."

Mr. Cobb said, "And I think at that time we had another attorney here?"

Ms. Rothenberg said, "Yes; he's not here tonight."

Mr. Cobb said, "Oh; I'm sorry."

Ms. Rothenberg said, "Oh; the applicant has an attorney. You meant—I thought you meant the City. The City does not have an attorney tonight. He is otherwise occupied. We do have testimony that is ready to be given by an officer."

Mr. Cobb said, "Okay; so whenever you are ready."

Ms. Hamley O'Donnell said, "I would ask that the staff report for this case, the exhibits, and the PowerPoint be made a part of the public record as well as—there is-- DVD of police video footage of this site also be entered into the public record-- and the application as well entered into the public record and any supporting materials with their application. Is that accepted?"

Mr. Cobb said, "Yes, it is."

Ms. Hamley O'Donnell said, "Thank you. This building is located at the southwest corner of Noble Road and Monticello Boulevard in the 'C2' Local Retail district. To the north, east and south are retail and service businesses in a 'C2' Local Retail district. West of the building is an office building in a 'C2' district and single-family homes in the 'A' Single-Family district.

The history of this case involves Calendar Number 622 in 1968 when Union Oil Company was granted approval to demolish a gas station and office building to construct a new service station. Planning Commission case 98-9 in 1998: Aymin Abdelhady received a Conditional Use Permit to install a new pole sign. It was approved with the conditions that:

1: Prior to issuance of sign permit and installation of pole sign, applicant shall obtain approval of landscaping plan from Planning Director; and that all work would be completed within six months of the effective date of this permit and;

[2:] That all landscaping as approved by the Planning Director should be installed no later than two months after installation of the sign.

[3:] A third condition was: No merchandise except oil may be stored or displayed outdoors.

[4:] The fourth was: The hours of operation shall be limited to the hours of 6:00 a.m. until 12:00 midnight.

[5:] Number five: Any renovation of the vacant service bays into a mini-mart or additional signage will require a new conditional use permit; and

6: Planning Commission approval contingent upon Architectural Board of Review approval of the proposed sign.

In Project Number 09-14 in 2009: Roman Gaid, dba Noble Roman, requested a revision to conditional use permit for the new operator to operate existing gas station and convert 3 service bays into a merchandise sales area/mini mart with liquor sales in conjunction with existing gas station. In October 2009, the Planning Commission continued that case until November so that the applicant could work with staff to resolve planning and police issues and in November [200]9, the case was continued for 60 days so that the applicant could work with staff to create a comprehensive plan for the site and its operation. In January of 2010 the case was continued again for 30 days and then in March of 2010 the conditional use permit was denied.

In April of 2010 the applicant appealed the denial to Cuyahoga County Court of Common Pleas, Case Number CV-10-722492. In January 2011 the City of Cleveland Heights and Noble Roman reached a settlement with Court approval in consolidated Cuyahoga County Court of Common Pleas Case Numbers CV-10-723015 and CV-10-722492. The agreed-upon terms and conditions of the settlement, issuance of the Conditional Use Permit, and corresponding Judgment Entry are part of the public record and were included in your packets as Exhibit "A."

In July of 2012 a violation was sent for the unauthorized expansion of the mini-mart. In August of 2012 the City of Cleveland Heights sued Noble Roman in Cuyahoga County Common Pleas Case Number CV-12-788400 for alleged violations of the terms and conditions of the Conditional Use Permit and corresponding Judgment Entry/settlement agreement was referenced and was included again as Exhibit "A."

In March of 2013 the Court ruled that Noble Roman was in violation of the terms and conditions of the Conditional Use Permit and corresponding Judgment Entry/settlement agreement. Court found that the violation arose from Noble Roman's use of the service bays of the gas station for merchandise sales. Court ordered that Noble Roman be prohibited from using the repair bays for the expansion of retail activities. Court further ordered Noble Roman to restrict retail sales to the area permitted by the Conditional Use Permit and correspondence Judgment Entry/settlement which was included as Exhibit "B" which is also part of the public record.

In November of 2013 the Court ruled that Noble Roman was in violation of its March 2013 Order (identified immediately above and attached hereto as Exhibit B). The Court imposed numerous requirements upon Noble Roman. A copy of the Court's Order was attached as Exhibit Three—sorry, Exhibit "C" – and is part of the public record.

Mohamed Afifi, on behalf of Noble Roman, requests an expansion of the conditional use to expand merchandise sales area/mini mart with liquor sales into the former service bays/storage area in the south two-thirds of the building and the western building addition, thus operating retail out of the entire building. Any expansion or change of the use requires a new conditional use permit.

The applicant's current approved hours are 7 a.m. to 12 midnight and, in addition to gasoline, they currently sell beer, wine and convenience snack and grocery items. The City has video evidence that Noble Roman, Inc. has operated outside of its approved hours of operation.

The current Conditional Use Permit allows retail sales only in the northern third of the building. When staff visited the site on July 13, 2018, the former service bays/storage area

had almost entirely been converted for retail use and a cooler addition been constructed and occupied on the north side of the building. No City permission had been granted for the expanded retail or the building addition.

This floor plan shows—this shows their proposed site plan for the building. Above left is the approved floor plan for the existing conditional use permit and at bottom is Noble Roman's proposed floor plan with staff approximating the location of the recent addition in red. The applicant's proposed floor plan is similar to the current conditions. The current Conditional Use Permit allows the retail sales only in the northern third of the building and again that was done—that expansion was done—without City review. These are photos of the interior of the mini-mart.

The C-2 Local Retail District's stated purpose is for "operation of small neighborhood commercial establishments and to concentrate new retail businesses in buildings that typically locate side by side in order to create and encourage pedestrian activity." Auto uses are no longer permitted in the C-2 Local Retail District; however, this use is a prior non-conforming use and may continue as a conditionally permitted use. An auto-oriented business with gasoline sales needs to be well maintained and ample landscaping—with ample landscaping—so as not to not disrupt pedestrian activity and to not be detrimental to nearby residents or businesses.

The gas station/mini mart has a history of police problems and Chief Mecklenburg has stated that the gas station/mini mart has more police calls than a typical gas station which is detrimental to and endangers the public health, safety, moral comfort and general welfare. From 2009 until the present, police have been called to this site 602 times. A copy of police crime summary report, calls for service, and are included as part-- are attached hereto as Exhibits D, E and F. Calls include those for drug-related crimes, aggravated robbery, robbery, assault, suspicion, suspicious person, theft, breaking and entering, fraud, juvenile complaints, loitering, receiving stolen property, soliciting, disorderly conduct, criminal mischief, obstructing official business, damage to property, disturbance, alarms, car lockouts, and other reasons.

Loitering continues to cause problems and there have been complaints about the loitering and inappropriate behavior that occurs next to the windowless west façade of this building. Installing windows on this façade would allow the workers to see this hidden part of the property and discourage loitering. This T 1-11 siding plywood addition shown here has been added to the building sometime after October 24 based on its absence in this 2014 Google Streetview image. No building permits were issued for interior work for the expansion or the western addition and the Building Department has not inspected the site. There is video evidence that the business has operated in violation of its conditional use permit, staying open after midnight; and this shows the unscreened dumpster.

The current approved operations and security plan requires maintaining all security cameras currently installed in accordance with Memorandum of Detective Michael Kane dated March 4, 2010 in good working order, subject to normal wear and tear, and shall maintain the video recording equipment so as to keep a video archive of all security cameras for a period of not less than thirty days. Applicant shall provide access and duplication opportunities to the employees of the City of Cleveland Heights upon forty-eight hours' notice to the applicant's legal counsel. This access does not require the removal of the video tapes from the premises. The site is generally poorly maintained and not in accordance with this approved landscape plan. There are missing plants although we did get some photographs from the applicant today and there was some improvement done. Some new mulch was put

down and some trash was put (sic) up although there are still plants that are missing-- from that—from the site.

Ms. Rothenberg asked, "Sorry; are you saying it is still not conforming?"

Ms. Hamley O'Donnell replied, "It is still not compliant with the plan; right. There's been some improvements but it is still not is still not compliant. There are missing plants, unscreened dumpsters and air conditioning units; and the building's appearance-- excess asphalt—and maintenance is not up to the standards within this commercial district."

The Zoning Code now requires that all commercial buildings provide windows along at least 60% of their lineal frontage at street level to allow people to see and be seen for passive security and to encourage pedestrian activity and district vitality. Additional windows on the east and west facades, reducing shelving in front of existing windows that blocks views insides, and removing security bars on existing windows would greatly improve the appearance of this property and contribute to passive security. These reasons stated show that this site is not maintained or operated so as to be harmonious and appropriate in appearance with the existing or intended character of the area.

Loitering, an ill-kept site, and chronic problematic behavior at the site are injurious to the use and enjoyment of other property in the immediate vicinity and substantially diminish and impair property values within the neighborhood. Residents of neighboring properties have been notified of this public meeting and are invited to comment on the applicant's proposal.

The site has long been congested, oftentimes spilling onto the public streets. The Police Department already has concerns about traffic congestion caused by automobiles waiting to come in to this congested site at this busy intersection. As such, the City believes that that the applicant currently lacks adequate measures to provide ingress and egress designed to minimize traffic congestion in the public streets. Additional retail space would bring more customers and would require additional delivery trucks, further complicating the already congested parking lot. Employee parking, gas pump parking, customer parking, delivery truck parking, and gas delivery create conditions that would be worsened--*could* be worsened-- if retail sales intensified, and could further limit ingress and egress, causing traffic congestion in the public streets. The applicant should explain how a garbage truck will load the dumpster, where delivery vehicles will park and unload, and how the gas truck will navigate the site to fill the underground storage tanks on the building's south side if the parking lot is full.

The high number of police calls to this site is detrimental to the economic welfare of the community by creating excessive additional requirements at public cost for police. A representative of the Police Department will -- is here at the meeting to present evidence.

There is minimal potential future hardship on the conditional use that could result from the proposed use being surrounded by uses permitted by right that are incompatible.

A new conditional use permit shall be required for any change, modification, enlargement or alteration of a conditional use. Shown are the requirements for gasoline stations found in Section 1153.05(t) and the supplemental regulations for gasoline stations in Code Section 1131.09. Many of the above conditions apply to a newly built gas station and may conform to or be prior nonconforming uses at this site. However, conditions around activities and behavior on this site should be included as conditions of any approval.

Staff-- Because the current operation of the conditional use endangers the public safety, is not designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the intended character of the general vicinity, is injurious to the use and enjoyment of other property in the immediate vicinity, adequate measures have not been taken to provide ingress and egress designed to minimize traffic congestion in the public streets, and is detrimental to the economic welfare of the community by creating excessive additional requirements at public cost for the public facilities such as police. Staff recommends that Planning Commission deny the proposed expansion of the conditional use permit to convert three service bays/storage area into merchandise sales area and mini mart with liquor sales in conjunction with the existing gas station and that the applicant immediately restore building to the approved floor plan which was retail in the north third of building-- and no western addition-- with permanent wall dividing retail and storage areas, obtaining permits as required.

If the Commission chooses to approve the expansion, any new conditional use issued would supersede the previous conditional use permit. If the Commission approves the expansion as described in the applicant's materials and the staff report, we recommend the following conditions. Do I need to read those? Thank you. Okay, there are seventeen of them. They're in your staff report if you choose to move forward with that that could be read at the time a motion is made.

And that's all I have. There is an additional witness from the Police Department who is here to testify.

Mr. Cobb said, "Okay; before we get to that I've got some questions. The Journal Entry from Judge Villanueva, March 29, 2013 and October 3, 2013?"

Ms. Hamley O'Donnell asked, "Could you speak up a little bit?"

Mr. Cobb said, "Sure. I've a couple questions about the Journal Entry from Villanueva Case 12-788400 and..."

Ms. Hamley O'Donnell asked, "Which exhibit is that?"

Mr. Cobb said, "Exhibit 'C'—Exhibit 'B' and Exhibit 'C.' Are these journal entries still in effect?"

Ms. Rothenberg said, "Yes."

Mr. Cobb said, "And then attached is Exhibit 'A.' Is the Planning Commission Conditional Use Permit—is this the *current* conditional use permit? And I'm not sure what that was attached to."

Ms. Hamley O'Donnell said, "So—yes-- that was the current conditional use permit. It was issued through court and not through this Planning Commission."

Mr. Cobb asked, "Has there been any litigation between the City and Noble Roman concerning this journal entry since 2013?"

Ms. Rothenberg said, "No."

Mr. Cobb asked, "Did that security camera ever get installed that was referenced in the journal entry?"

Ms. Hamley O'Donnell said, "Yes."

Mr. Cobb asked, "And was it ever monitored by the City or did we take any steps to get it?"

Ms. Hamley O'Donnell interjected, "I think it would be a better question for the police officer. It was my understanding that it has but I think he's got firsthand knowledge."

Mr. Cobb asked, "And the current applicant seeks to enlarge this Conditional Use Permit?"

Ms. Hamley O'Donnell said, "Correct. It's the same applicant-- Noble Roman—the same business."

Mr. Cobb said, "Okay... and seeks an enlargement of Exhibit 'A' Conditional Use Permit? Is that basically what's in front of us?"

Ms. Hamley O'Donnell said, "Correct."

Mr. Cobb said, "Okay."

Ms. Hamley O'Donnell said, "However, I will point out—as I point out in my staff report—it's already been expanded without your approval."

Mr. Cobb said, "Okay. Any questions for staff?"

Mr. Rink asked, "Yeah; what can be done about the expansion that was done illegally?"

Ms. Rothenberg said, "We are working on that. That's not before you. That's not your problem although part of the recommendation was – can you get that up on the board—was language making it clear that it should be restored..."

Ms. Hamley O'Donnell interjected, "...to the approved plan—the last sentence..."

Ms. Rothenberg continued, "... to what was approved. So that could be part of your motion, but the City is looking into other venues of getting enforcement as well."

Mr. Cobb said, "Okay; and so staff has the officer who is going to testify? Is that okay? Officer, if you'd approach the podium, tell us you did take the oath and affirmation and state your name."

Sergeant Christopher Skok said, "My name is Chris Skok. I'm a sergeant with Cleveland Heights Police. I did take the oath."

Mr. Cobb said, "Thank you. What would you like to tell us?"

Sergeant Skok said, "Well, I am here to discuss the calls for service. There's a lot of material. So I guess if you need me to stop, I will. I'll try and do this quickly. I have a quick question. Did I hear correctly that you guys already have a packet of what is in front of me?"

A man and Ms. Hamley O'Donnell at the same time replied, "Yes."

Sergeant Skok said, "Okay."

Ms. Rothenberg said, "That has been made part of the record. You don't have to-- Don't feel that you have to read all of them. It would be appropriate - unless the Chair corrects me-- to summarize."

Mr. Cobb said, "That's correct. Why don't you just tell us a little about your background before you go into the report-- how long you've been with the department; what your duties and responsibilities are."

Sergeant Skok said, "Sure. I've on the Police Department and I've just completed twenty years. I'm a Detective Sergeant in a unit called the Crime Suppression Team. It's a plain clothes unit. I have three or four detectives. Our primary focus is property crimes; mostly burglaries and secondly we handle all the drug complaints that come in through complaints and anything that would require immediate follow-up when the main detective bureau is not available. If we have a lead-- our unit--we go out there and we follow up with that lead, like serious crimes; felonious assaults; homicides; shootings; stabbings; and things of that nature."

Mr. Cobb said, "Okay; and then we were given a packet of information. Can you generally describe for us what this information is and how it was compiled?"

Sergeant Skok said, "Okay. So the first document here is a three-page document. This is a summary of the entire 602 calls since January 1, 2009 through September 27..."

Ms. Hamley O'Donnell interjected, "This would be Exhibit 'D.'"

Sergeant Skok said, "...Exhibit 'D'? Okay."

Mr. Cobb asked, "And did we give the applicant's counsel-- does he have-- a copy of this?"

Ms. Hamley O'Donnell said, "Yes. This was emailed to him."

Mr. Cobb said, "Okay,"

Sergeant Skok said, "So this exhibit here--well-- first let me first explain how-- this-- we get these statistics here. If anyone calls the police for any reason the call goes to our dispatchers and they document date, time, location and a quick synopsis of the call--the type of call that it is. They dispatch officers to that location. So-- so basically what we did was we put in a date range and then we put in an address and we just click a button and it generates different categories. For example, the very first line says Accident Damage and there's like five or six, seven other categories for different types of accidents. Then the next one Aggravated Robbery; Alarms - four or five different categories for Alarms; Animal Complaints, Bar Checks, Breaking and Enterings; Disturbances and next to that category-- that classification-- there's a number and that would break it down. For example--very first one--it says Accidents and Damage and there are 20 accidents, but then there's four or five other accident categories that has a number-- coincides with that. So there's 602 calls for service that's Exhibit 'D'. The next exhibit--I'm not sure what exhibit it is, but - it's basically the 602 calls with a little bit more information.

Ms. Hamley O'Donnell interjected, "Exhibit 'E'."

Sergeant Skok said, "Exhibit E—and same concept of how we generate this report—we just put in different parameters and --we'll -- it still breaks it down by the date range, the address-- 2610 Noble,-- and the date from the very first call was January 4, 2009. And it'll tell you what kind of call it was—a disturbance; and whether there was a just regular CAD entry or a file number— a report number--that was pulled, which would be in a category—a column all the way to the right-- if there was a file pulled. And what that means, if there's a file pulled, that just means that an officer had to do additional investigating work—that he had to document more than just showing up for a call—which a lot of times we just show up and—[unintelligible]-- resolve the situation and there's no file or report pulled. So this exhibit out of the 602, I believe there's 121 calls that I -- well someone-- highlighted that I was going to read over a couple of them-- just so you—you know unless are good with this document here.

Mr. Cobb said, "Well, let's focus on the last few years—the dates since the agreed Journal Entry, because from my perspective what occurred before that Journal Entry is not really relevant."

Sergeant Skok said, "Just tell me what date you want me to start."

Mr. Cobb said, "Let's start at 2014 and work our way up."

Sergeant Skok said, "January 12, 2014, suspicious person; caller reports suspicious person at the above; February 2, 2014-- these are all 2610 Noble by the way—Disturbance: unwanted guest, caller reports male on the scene disturbing customers; 5/18/14, Disturbance: 3rd party caller reporting a disturbance between a male and female; 6/30/14, Assault: caller reports a large fight at the above location; 7/6/14, Disturbance called in: the officer reports he's out with the disturbance. One male fled on foot and he was unable to be located; 7/7/14, there was a Damage Accident, motor vehicle accident was reported; 7/24/14, Accident Damage, motor vehicle accident reported at the above location; 9/17/14, Disorderly Conduct, caller reports a male was assaulted, EMS was contacted, and one male was arrested; 9/23/14, Suspicion Call, reports of a young black male possibly selling drugs; 6/24/15, Shoplifting Theft, caller reports a theft—shoplifting at the above; 8/11/15, Theft of a Vehicle, caller reports vehicle was taken with keys; 9/8/15, another Accident was reported, caller reports a vehicle hit her vehicle at the same location; 10/1/15, Suspicion call, caller reports two black males attempting to sell I-Pad to owner of Gas USA; November 10, 2015, Suspicious Vehicle, caller calls to report hit-skip, no injuries; February 3, '16, Soliciting Call, caller reports male outside soliciting and harassing customers; 3/7/16, Suspicious Person, reports male asking for money at same; 3/28/16, Loitering, call reports male in parking lot loitering; 4/11/16, Disturbance, caller reports juvenile complaint; May 3, '16, Loitering, caller reports male loitering; 7/16/16, Disturbance customer, caller reports male harassing customers; 7/19/16, Suspicious Person, caller reports male harassing customers; 8/10/16, Breaking and Entering, rear door alarm was reported; 8/12/16, Accident Hit-Skip, caller reports hit-skip accident at same location; 9/3/2016, Robbery, caller reports son was assaulted; 10/3/16, Accident, caller reports two-car accident, no injuries.

Mr. Cobb interjected, "Officer; let me interrupt you. Are you just -- you hitting some of the highlights?"

Sergeant Skok said, "Yes; these are just the highlights. There's 602—I only highlighted 120 dating from January 1, 2009, to Present."

Mr. Cobb said, "Okay, let's—say-- jump to 2017."

Sergeant Skok, said, "Okay. We're almost there. 2017: You said '17? February 18, 2017, Menacing, Aggravated Menacing, caller reports a robbery at above location; 3/7/17, Suspicious Person, caller reports two black males outside the gas station asking for money and yelling at customers; 3/12/17, Loitering, caller reports a male loitering outside the gas station; 3/17/17, Disturbance, caller reports a disturbance at the above location; 3/19/17, Disturbance, caller reports a disturbance with a customer; 4/13/17, Breaking and Entering, the officer reports glass broken out of the main door; 4/30/17, Loitering, caller reports male loitering; 5/2/17, Soliciting, reports black male, red baseball cap, jacket asking people for money; 7/3/17, Disturbance, caller reports two males fighting in the parking lot; 7/4/2017, OVI alcohol, caller reports male asleep behind wheel of a vehicle, that male was returned for OVI; 7/24/17, Accident Hit-Skip, caller reports hit-skip accident at the above location; 7/29/17, Accident Hit- Skip, reports motor vehicle accident and the other party left the scene; 8/3/17, Accident, damage to car MVA, no injuries; 8/3/17, Accident, damage to car MVA, no injuries, 8/14/17, Complaints of Juveniles, caller flagged down four juveniles smoking marijuana; 10/9/17, Disturbance, employee reports several males in physical disturbance; 10/25/17, Open Container, reports male cited for open container, advised not to return to the business or he will cited for trespassing, criminal damage and endangering; on 10/27/17, caller reports male threw brick in window, office in reports one mail in custody arrests for criminal damage; 10/31/17, Suspicion, caller reports large couple of juveniles young mostly men just hanging around the gas station; 11/9/17, Theft of Vehicle; 11/9/17, Open Container; 11/24, Suspicious Person, squad call, man possibly on heroine looks like he's going to pass out, squad transported him; 1/10/18, Motor Vehicle Accident on private property at same location, that occurred in the parking lot, no injury; 1/18/18, Dispute, [unintelligible] at [unintelligible] station, passenger started to hit the driver; 1/29/18, Soliciting, black male soliciting money from customers, police had been called many times for this male, he had been given a warning and they advise that if the male returned, to call again; Soliciting, 1/29/18, Yelling or Becoming Combative with anyone annoying people asking for money. Just so you know, these last few that I am reading—we-- switched over to a new dispatch center and they actually add more notes about what is actively occurring-- officers calling it out-- or additional information they get from phone calls that are being called in. 2/23/18, there's an alarm main entry door; 3/6/18, Soliciting, two males begging for money; 5/8/18, Motor Vehicle Accident, private property, no injuries; 5/23/18, Motor Vehicle Accident Involving a Pedestrian, squad was called, male on bicycle hit by car; 6/10/18, Suspicion, caller reports he cannot find his car keys, stated he went into the gas station and left the key in the ignition of the vehicle, caller can't locate his key at this time, suspects two young males who are in a silver vehicle next to him to have taken the key; 6/11/2018, Suspicious Vehicle, caller states that two vehicles have been parking off and on, possibly selling drugs, white Chevy, two-door car, states asked the people to leave but continually coming back to park after being asked to leave; 6/26/18, Disturbance, female advising someone will not leave her alone at the gas station; 7/12/18, Stolen Vehicle, states her vehicle was stolen from the gas station, taken with keys; 7/30/2018, Special Attention, officer was out on a follow-up; 7/31/18, Business Check, officer reports the business was still open at that time this was at 0:0:10 hours in the morning; 8/3/2018, a Drug Investigation, reports witnessing, that was actually me witnessing-- a drug transaction between males involving a white Ford, reports I had the vehicle stopped at Noble and Woodridge, once he pulled out-- and two people were eventually charged through the Grand Jury for that one for trafficking and drugs; 8/17/2018, Breaking and Entering, at that business, suspect, info older black male, white beard, white shirt and cowboy hat; 8/17/2018, follow-up investigation; --almost done here--8/28/18, another Vehicle Hit-Skip

accident; 9/1/18, Disturbance, 911 caller requests Police Department at Gas USA on Noble, says that he was jumped, says male put a knife to his neck; 9/4/2018, Criminal Damage, reports front glass break with security bars, with brick, reviewing video surveillance from the store, appears that male walked up to the door and threw a brick and ran southbound Noble, suspect may be from an earlier incident at the store. That's it for that exhibit. The last exhibit..."

Ms. Hamley O'Donnell interjected, "Exhibit 'F'."

Sergeant Skok, said, "F-- So since the date range which was January 1, 2009 to 9/27, 2018, there were a total out of those 602 calls-- there were-- approximately 362 reports that officers actually had to take a report. Now, I selected approximately 120 of those reports. I did not print out the whole report; just the actual face sheet which is the first page of the report. What this depicts is--gives the date, location, the times the dispatcher received the call, the arrival time of the officer, and the time when the officer--when he--cleared the call. And it also gives a description of the offense--the different codes--and it also shows how many officers were called to that location. So, what I did was I selected approximately 120 and I went through and I--someone had to help me-- with the math from the time that they received the call to the time they cleared it. What I did was for example the very first one, that's file number 096390-- there were three officers on 9/21/2009 --there were three officers-- that responded there for 51 minutes each--for 51 minutes each. So what I did was added all that up. There was approximately 394 officers that were dispatched. Only on those 120 files, 394 officers were dispatched and assisted one another. In these reports, approximately 18,000 minutes-- or 303 hours-- were spent doing the investigations at 2610 Noble Road. Now this does not include detective follow-ups or the amount of time it takes the officer to type up his reports. And so essentially out of these 121--some of them I've already read--if you want I can read a couple, but, like I said, there's almost 360 reports in that timeframe--121 reports I selected--and just broke down how many times officers spent their time there at that store.

Mr. Cobb said, "And we can review that. Do you have any estimate of the manpower hours since January 1, 2014? How did that total?"

Sergeant Skok said, "I did not. I did not break that down."

Mr. Cobb asked, "And how many other similarly situated service stations are there in Cleveland Heights that would be comparable to this business?"

Sergeant Skok said, "Well there's one directly across the street, that's at -26-0-- that's catty-corner to Gas USA--2603 Noble Road. That's one. I do know I do have a little bit of stats on that as well."

Mr. Cobb said, "Okay, but what other similarly situated service stations... Do they have a liquor license at this location?"

Sergeant Skok said, "They do not."

Mr. Cobb said, "Okay."

Ms. Rothenberg said, "Sorry; can you clarify that?"

Sergeant Skok said, "That 2603 Noble Road has a Liquor License?"

Ms. Hamley O'Donnell interjected, "We're 2610."

Ms. Rothenberg asked, "We're 2610. Are you asking if 2610 has a Liquor License?"

Mr. Cobb asked, "Does 2610 have a liquor license?"

Sergeant Skok said, "I believe—yes-- they do."

Mr. Cobb said, "Okay."

Ms. Hamley O'Donnell said, "2603 does not."

Sergeant Skok said, "Correct."

Mr. Cobb said, "So what I guess I am trying to get a handle on is how are the number of calls to these two service stations in comparison to other service stations that are in the City?"

Sergeant Skok said, "I don't have those stats in front of me but..."

Mr. Cobb interjected, "Based on your experience..."

Sergeant Skok said, "Based on my experience, Mayfield Coventry-- there's a BP there—probably about half the calls for service. I actually remember running that recently. There were about 350 calls for service with the same date range-- January 1, 2009 to present. You've got some gas stations—Sunoco, Superior and Lee. Recently again that is right in that 300 range. They also—I'm not sure if they serve alcohol or not at Sunoco at Superior and Lee..."

Mr. Cobb interjected, "Based on your experience..."

Sergeant Skok said, "There's another one on Taylor Road—just under 300—right at Taylor and Blanche—calls for service; same time period."

Mr. Cobb asked, "Does this 2610 Noble have in your opinion a disproportionate number of calls for service compared to the others?"

Sergeant Skok said, "Compared to the gas station across the street? Yes."

Mr. Cobb asked, "How about in comparison to the other service stations in the City?"

Sergeant Skok said, "The few that I mentioned-- Yes."

Mr. Cobb asked, "Okay. Any other questions for the officer? Counsel, did you have any questions for this officer? You had a question?"

Anthony Mattox Jr. said, "I did have a question. In terms of reviewing a video tape; have you requested that, or viewed that- over that timeframe for any incidents? Any security footage for any reason?"

Sergeant Skok said, "Have I personally requested the video?"

Mr. Mattox, Jr. said, "The Police Department—for any incidents that may have happened on the property?"

Sergeant Skok said, "Oh—Yes, we have requested it and to my experience, I believe they have always complied with the video, to my knowledge."

Mr. Cobb asked, "Do you have some questions for the officer?"

Ms. Rothenberg-- explaining to Mr. Brown that he could speak at this time-- said, "Yes; and introduce yourself, too." [cordially encouraging him]

Adam Brown said, "Thanks. My name's Adam Brown. I'm here on behalf of Mr. Afifi."

[undetermined male speaker from audience] said, "Wait; what's your name?"

Mr. Brown said, "Adam Brown."

Ms. Hamley O'Donnell said, "Could you sit down?"

Ms. Rothenberg said, "Into the microphone..."

Ms. Hamley O'Donnell said, "...Microphone..."

Ms. Rothenberg said, "It's not a judge; you can sit. It's cool."

Mr. Brown said, "My name is Adam Brown. I am here on behalf of Noble Roman and Mr. Afifi. Thank you."

Mr. Cobb said, "You're welcome."

Ms. Rothenberg said, "Tilt it down so we can get it [recorded]."

Mr. Brown said, "Thank you; there's a learning curve to this. I did take the oath by the way. I'm going a little bit out of order but I will start by addressing the calls that were issued—the calls I guess we'll refer it as—with respect, sergeant, to these, how many of the calls that you've gone through—calls that have been collected and –I guess—have been categorized, how many of these calls can you link to the merchandise being sold in Noble Roman—or, I'm sorry—at Gas USA?"

Sergeant Skok said, "Right now, I can't answer that. I don't know."

Mr. Brown said, "You know, we're here about a request to expand merchandise sales in Noble—or in Gas USA and we've heard a lot of testimony about several years of Police calls to this location. With respect to the calls that you've listed off, how many of them involved to your knowledge an employee of Gas USA?"

Sergeant Skok said, "Well, without having the full reports in front of me, the entire reports that were pulled, I can't answer that. I don't know."

Mr. Brown asked, "Do you have any knowledge of incidents where employees of Gas USA have acquiesced or participated in the type of criminal activity that you're talking about?"

Sergeant Skok said, "Yes."

Mr. Brown asked, "Could you elaborate on that?"

Sergeant Skok said, "Sure. Somewhere in this packet I actually responded to Gas USA. My responsibility was to type up a search warrant for the establishment because several employees were buying stolen iPads from students and a judge found probable cause for us to search the establishment and we did recover at least one of the iPads."

Mr. Brown asked, "Do you have any other examples, sergeant?"

Sergeant Skok said, "I believe there's a report here where one of the employees was cited for illegal distribution of cigarettes. I'm not sure—I don't have the report in front of me, but I think a CV—a citation—was issued."

Mr. Brown asked, "Would you say—would you agree with me—more or less-- these calls do not involve employees of Gas USA but they involved things going on with--I guess—customers or pedestrians other than the employees of Gas USA?"

Sergeant Skok said, "Yes, it's mostly customers and people hanging around causing the problems."

Mr. Brown asked, "Does 2012 sound like around the time the iPad incident occurred? Would that sound like a fair representation?"

Sergeant Skok said, "I believe so, because I just started the—I was put in charge of the Crime Suppression in July of 2012—so, somewhere around there, maybe."

Mr. Brown asked, "Do you know Mr. Afifi was not involved to your knowledge in that..."

Sergeant Skok said, "I believe he was there and somehow he managed to leave the premises before the police could secure it."

Mr. Brown asked, "Did Mr. Afifi get charged? Mr. Afifi didn't get charged for any crimes for that?"

Sergeant Skok said, "No."

Mr. Brown said, "Motor vehicle accidents that you talked about, sergeant, how do you know that that was a result—I guess-- how was that at all linked to the sale of merchandise that is being sold at Noble Roman?"

Sergeant Skok said, "The accidents that I'm talking about—if I don't really pull the accident report and look to see where they actually were travelling-- they could have been just in front of the address and the officer used that address. I really don't have that data. I don't know if the accident was caused because someone was waiting to pull in and they got rear-ended. I don't have that data because I don't have all of the accident reports in front of me."

Mr. Brown said, "So just in all fairness, it just seems like it's all being thrown on Gas USA, because the call is related to the address and Gas USA is at this address, all these calls, whether a motor vehicle accident or a suspicious person—I'm not sure what the caller's definition of suspicious is, in those 40 or 50 occasions that was, but it's all being linked to

Gas USA, because it's the address that's right there. There's a bus stop right there, isn't there, on Monticello?

Sergeant Skok said, "I know there's one in front of CVS. I don't recall if there's one right in front of the store on Monticello.

Mr. Brown said, "So, with respect to motor vehicle accidents—I guess my question is—how do you know that it's not a result of driver error as opposed to inadequate ingress and egress on the property?"

Sergeant Skok said, "I don't know that right at this hearing. I don't know."

Mr. Brown said, "In August of this year, he was burglarized. Isn't that right?"

Sergeant Skok said, "I believe he was burglarized."

Mr. Brown said, "And he called and he participated with the police—just like you said—he complied with video and all those requirements?"

Sergeant Skok said, "Yes. That's true."

Mr. Brown said, "Are you aware—and you may not be-- that Mr. Afifi was the *new* owner of Gas USA—of Noble Roman—I'm sorry?"

Sergeant Skok said, "I'm not aware.

Mr. Brown said, "He is—and I understand that the rules of evidence aren't being strictly applied here. Can you explain to me why a suspicious person or persons—those types of calls—I understand they are included in here just because they occurred, but we would agree, I guess, that the caller—what someone deems to be suspicious could vary from caller to caller."

Sergeant Skok said, "Correct."

Mr. Brown said, "...and not be illegal at all."

Sergeant Skok again said, "Correct."

Mr. Brown said, "Are you aware, sergeant,--I believe you are—there's been a lot of prior litigation with respect to this gas station?"

Sergeant Skok said, "I don't really get involved with that. I really don't know. I've heard some things over the years."

Mr. Brown said, "So, in 2012, Lieutenant Chris Britton—is he still with the department?"

Sergeant Skok said, "Correct; he's Captain now."

Mr. Brown said, "At the time he was a lieutenant, I guess he testified in front of Judge Villanueva in the same proceedings—or similar proceedings that Mr. Cobb referenced earlier-- he said that he was a long-term resident of the area and very familiar with the area in which the Noble Roman business was located. He testified that he lived in the area since

1995. He candidly admitted that the location where the business situated has-- quote-- always had difficulties.[unquote?] The problems in that particular area of the city were not of recent origin. Apparently the overall set of problems and challenges confronting the City of Cleveland Heights in the vicinity of 2610 Noble predated Noble Roman and appeared to worsen over time. Would you agree with that testimony from your colleague, Captain Britton, that he gave in 2012?"

Sergeant Skok said, "It's hard to say. I do follow crime trends. It just seems like it's always been steady over there. I can't say whether it's increasing over time. I also am a resident of Cleveland Heights and do live in that area and I pay attention more. To me, I want to say that there have been no changes since I've moved into the City for the better over there-- my personal observations and opinions. As far as the amount of calls that come in-- the types of calls-- the kids--young teens--early adults-- hanging around that establishment and it's just very, very active over there. And when you sit back and you look at that place and then you look at 2603 Noble, there's so many people over there and there is really nothing going on at the other corner. It's been like that ever since I've been a police officer here and as long as I've been here in Cleveland Heights."

Mr. Brown said, "What's the major difference between those two locations?"

Sergeant Skok said, "I personally knew the previous owner of 2603. I know he stayed on top of the people that were in the lot. He made sure—I've had conversations with him—made sure that when people were hanging around he personally moved them off the property. He asked them to leave."

Mr. Brown said, "Would you agree with me that the liquor license situation was a major difference?"

Sergeant Skok said, "Well that's definitely going to bring more—in my opinion, I think it's going to bring more—customers there."

Mr. Brown said, "I guess I'm still having a difficult time—and maybe it's just the issue that we're dealing with here—is drawing a causal connection between the merchandise being sold in 2/3rds of the store and all of the problems that seem to be happening at the corner of Monticello and Noble being attributed to Gas USA. If we're not talking about the liquor license being a major difference between that gas station and the Shell catty corner. I don't see how identifying-- as far as the staff and-- these calls identifying-- where there's various alleged violations maybe occurring-- has to do with the 2/3rds of the store that's not being used or being used or being requested to be used to sell merchandise. And as you've gone through these reports—it's a lot of speculation. I think you kind of agreed with me in a way—at least as far as car accidents, that you don't know where these car accidents occurred—why they occurred. Suspicious people could mean anything. [someone whispered to Mr. Brown at this time and he paused.] Do you agree that a lot of these calls are not criminally related calls... alarms going off...?"

Sergeant Skok said, "Correct. Yes..."

Mr. Brown said, "People being locked out? Right?"

Sergeant Skok said, "Correct."

Mr. Brown said, "... a building or from a car?..."

Sergeant Skok again said "Correct."

Mr. Brown said, "Do you know if there's a bus stop catty corner from the Shell? Sergeant, do you know?"

Sergeant Skok said, "Yes; I know there's bus stops up and down Noble Road—drawing a blank right now, but – yeah—I believe there's one on Monticello. For sure; there's one on Monticello in front of whatever address that was—I guess it was 2603 Noble."

Mr. Brown said, "So, would a lot of these—or some of these calls-- are they being made by employees of Gas USA?"

Sergeant Skok said, "Some of these calls?"

Mr. Brown said, "Some of them? Yes."

Sergeant Skok said, "I believe there were a couple in there that were from employees-- yes."

Mr. Brown said, "I guess is there an allegation—and there may not be—I just wanted to sort of clarify that employees of Gas USA weren't cooperating with police or are not doing what they need to be doing to address what's being alleged to be sort of an ongoing issue. To clarify sergeant, you mentioned that the owner—or previous owner-- that you knew at the catty corner location would go outside and shoo people away when they were hanging around?"

Sergeant Skok said, "Yeah."

Mr. Brown said, "Are you saying that's not your understanding with respect to Mr. Afifi as the current owner at Gas USA? He wouldn't—he would not do those things?"

Sergeant Skok said, "I don't know. I drive that route every day and I pay attention and I always—not every single day, but times when I do go by—I do see a lot of people hanging out on the property right along the storefront."

Mr. Brown said, "So let's say Gas USA goes away and some other business just comes in. What's to say that is not just going to continue to happen? That's the trouble I'm having here. If they're selling chips in 2/3rds more of the store, or drinks—or whatever they're selling—how are we going to say that those people aren't going to hang around there anymore? What's the causal link there?"

Sergeant Skok said, "I don't know."

Mr. Brown said, "Thank you very much. I have nothing further for the sergeant."

Mr. Cobb said, "Okay. And I imagined you were going to have some remarks earlier. I think we got the point of your questions. So, when you summarize at the end, you can be brief about that. Are there any other questions for the officer? Anything further from staff?"

Ms. Hamley O'Donnell said, "No."

Mr. Cobb said, "Okay. Officer, was there anything that you wanted to add in response to any of the questions that you were asked by Counsel?"

Sergeant Skok said, "No."

Mr. Cobb said, "Okay. Thank you, sergeant. Okay. Do you want to have your client testify or add any remarks or..."

Mr. Brown said, "I do have some remarks and --should I come to the podium?"

Mr. Cobb said, "I'm fine with you speaking there as long as it's recorded. Are you not going to have your applicant testify?"

Mr. Brown said, "No, he's not going to be testifying and I can explain why in my remarks."

Mr. Cobb said, "No; that's entirely—it's your call."

Mr. Brown said, "Truthfully, the City's threatened to take criminal action against Mr. Afifi who bought the business in January and I don't really want him to testify right now. Now I can make representation on his behalf and I'm prepared to do that. In the staff report—I guess I'll sort of maybe back up and --a little bit of overview as I mentioned: Mr. Afifi bought the business in January of 2018--Noble Roman. The individual who owned the business prior to him is no longer involved in the business. That was the individual with whom all this prior litigation and all of these problems arose and took place. Mr. Afifi has worked at the location for several years. He's familiar with the area and he works very hard. He is from Egypt. He came here in the year 2000. He's got three kids. He's a member of this community, too. He has got a child on the way. He is a citizen of this country. He works 6 days a week-- I think-- at that location. He knows the members of the community and the fact is—we walked in here today and someone—one of the gentlemen in the back said hello to Mr. Afifi who-- recognized him from Gas USA. And in the report it said the applicant should explain how and listed three questions. Just sort of as a general matter, I know that staff managed to point out what it alleged to be all sorts of inefficiencies or inadequacies or violations that are ongoing. But, you know, he's been served with the notice and we've discussed that but this isn't the forum to determine whether-- or not-- he's in violation of something or is-- or is not-- in violation of something.

Ms. Rothenberg said, "I would just like to interrupt just so you know—because you don't know what this Planning Commission knows, which is that it is often considered relevant to Planning Commission whether or not permission was sought before a use was put in place..."

Mr. Brown interjected, "That's fine."

Ms. Rothenberg said, "Just so you know that's something that they often take into consideration."

Mr. Brown said, "I'd like to address the permanent addition that was added to the building. That was added prior to Mr. Afifi owning this business. He does not own the building. We've addressed this in correspondence with the City. I don't understand how that—he did not build that. He cannot remove that. He doesn't own this building. He's a tenant there. I don't understand and I don't think this Commission should even consider that. Whether the landlord or prior owner or whoever built that—I don't see how that can be held against Mr. Afifi's current capacity. And then to further consider the staff's recommendation that it be

removed would cost assumingly thousands of dollars and constitute a waste in many respects. They've also threatened criminal action against him for this permanent addition that he didn't build and can't remove. So, that's just one thing I wanted to point out. With respect to the landscaping, I did submit photographs and the staff has agreed with me rather as far as the cameras that have been installed. He's a new owner and he's trying to sort of pick up the pieces and work with the City and do the right thing. The reality is that he makes more money on the retail than they do in gasoline sales. In the interest of customer demand and in the interest of profit, we seek to expand the merchandise sales. Addressing the staff's three questions that were posed in the report, the first being how a garbage truck will load a dumpster, it comes in from Monticello, it empties the dumpster, it takes two minutes, pulls forward and exits onto Noble. Never been a problem and we'd be willing to provide video evidence of that if given the opportunity. Second question was where delivery vehicles would park and unload. Sometimes they park right in front on Noble Road side-- doesn't block any vehicles. Sometimes they park in the back by the dumpster. Takes 10 or 15 minutes and the delivery person is finished. It's never been a problem with delivery vehicles parking or unloading. Third question was how the gas truck navigates the site to fill tanks on the south side if the lot is full. The gas truck pulls in from Monticello, fills the gas tank and pulls out to Noble. There's never been an issue-- that's never happened-- and it takes 10 or 15 minutes at most. I think we got the point with respect to the calls—the police calls, so I'll skip over that part. Interestingly though the report—staff—one of the recommendations is removing security bars existing windows which I found to be inherently concerning. One of the calls we discussed was a burglary of this establishment in August of this year. Addressing the landscaping—I think as I mentioned in 2012 we have Lieutenant—now Captain—Britton explaining as Judge Villanueva stated candidly that this is an area of the City that has had issues for many years. This isn't new and I just think there is a disconnect between the crime and whatever else is going on over here and whether or not they should be able to sell merchandise in the other 2/3rds of the store. I understand the concern being that it will draw more people and more people brings assumingly more crime, but there hasn't been any linking—any testimony or causation—that's been shown there. There's a gas station catty corner to this and it's consistent with the uses in the neighborhood. I guess in a way the location is unique. Mr. Chairman, as you point out with your question to the sergeant concerning similarly situated service stations, which is difficult to say-- there aren't a lot of comparisons that can be made. We don't have in front of us the benefit of true statistics as far as comparisons regarding calls to those stations, what amount of those stations are being used to sell retail merchandise, whether those stations other than the Shell have liquor licenses or not. I think the staff's recommendations if approved-- the Conditional Uses-- are more or less reasonable with the exception of the removal of the permanent addition that Mr. Afifi can't do. For what it's worth, we're willing to discuss things further with the City trying to reach some resolution here. That's all I have at this time and I would ask the Commission to grant the application."

Mr. Cobb said, "I have some questions if you don't mind. How long has Mr. Afifi been associated with this location?"

Mr. Brown said, "My understanding is at least 2009."

Mr. Cobb said, "And attached to the application form is a commercial lease agreement."

Mr. Brown said, "Yes."

Mr. Cobb said, "...and that's between Noble Roman and Aymin Abdelhady. What is Mr. Afifi's relationship with either of these parties to this lease agreement?"

Ms. Hamley O'Donnell said, "Could you speak into the microphone?"

Mr. Cobb said, "... Attached to the Conditional Use Permit application form is a commercial lease agreement between Noble Roman and Abdelhady. So what is Mr. Afifi's relationship with either of those two parties?"

Mr. Brown said, "He's a tenant. I don't have an understanding—there's any further relationship-- and he's the tenant and they're the landlord to my knowledge.

Mr. Cobb said, "This is a lessor and a lessee. So is he a sub lessor of someone?"

Mr. Brown said, "He would be the lessee."

Mr. Cobb said, "Is his name on the lease?"

Mr. Brown said, "He signed the lease. It's on page 30 as Mohammed Afifi."

Mr. Cobb said, "...As a member of Noble Roman?"

Mr. Brown said, "On behalf of Noble Roman."

Mr. Cobb said, "He signed on behalf of Noble Roman and the Consent Decree is between the City and Noble Roman? Is that right?"

Mr. Brown said, "That's correct."

Mr. Cobb said, "And is there any acknowledgment that he's already expanded into those additional bays?"

Mr. Brown said, "Well, we have seen the pictures that have been presented and received notices of alleged violations, and... you know."

Ms. Rothenberg said, "Is that a yes-or-no question?"

Mr. Cobb said, "Well, I guess the answer to that is you're not denying that it's already been expanded."

Mr. Brown said, "Well, I think the pictures sort of speak for themselves."

Mr. Cobb said, "...speak for themselves... all right. And your law firm's been involved with this matter since dating back to the Consent Decree? That is right?"

Mr. Brown said, "So, that is my understanding. I have not personally..."

Ms. Rothenberg interjected, "...but Larry Zuckerman has..."

Mr. Brown said, "...my colleagues have; at least, I think [since] 2010. I think they were involved in this to answer your question."

Mr. Cobb said, "So, what steps knowing-- I guess-- this location has been on the City's radar—what steps has Mr. Afifi taken knowing that to address some of the concerns that the City has had?"

Mr. Brown said, "Number one, he has updated the landscaping and improved the landscaping. I did provide some pictures to the City today. I do have pictures here for the Commission. And in addition to that he has added striping to the parking lot as was requested and I think he is being required by the Conditional Use Permit. He has asked that and I have pictures of that, also. And the security cameras, he's updated the security system. He's working with Police. As the sergeant testified, he has no knowledge of there being a lack of cooperation when requested. Mr. Afifi has worked there for a number of years; he recognizes the issues that are before the Commission as far as the nature of crime in the neighborhood and things like that. I spoke with him about this. He said that he does go outside and shoo people away when he sees them loitering around and that it's a constant problem. He says that there have been times as was alleged that they've stayed open past when they're supposed to. He's addressing that. He's trying to not do that. He won't be doing that any more. I know that there's a statement in here that video evidence exists. I don't know when that video was taken. I've discussed this with him. He's assured me he's not going to be open past when he's allowed to stay open. The expansion; again I just can't see how that could be held against him. In a sense that he was not the owner of the land, when he did not own the business when that was built and he can't remove it now.

Ms. Rothenberg said, "I'm a little bit confused when you talk that. Are you talking about the building itself or the use of that building?"

Mr. Brown said, "I'm talking about the permanent expansion that's..."

Ms. Rothenberg said, "... but what about using that building for retail sale. Can he control that?"

Mr. Brown said, "The staff recommended removing the entire structure; the entire addition."

Ms. Rothenberg said, "You didn't answer my question."

Mr. Brown said, "The staff recommended removing the entire structure. He can't do that.

Mr. Rink said, "Do you have an answer to that question, though? Can he not use that space? That's a yes-or-a-no question. What's the answer?"

Mr. Brown said, "I think as the Conditional Use Permit exists, it's not supposed to be used for the sale of retail."

Mr. Rink said, "And is he using it right now?"

Mr. Brown said, "I have no personal knowledge of that."

Mr. Rink said, "Can you ask your client and tell us?"

Mr. Brown said, "I'd rather not do that."

Mr. Rink said, "Okay. I guess you have the right to do that. I think you've answered the question to my satisfaction, though. "

Ms. Rothenberg said, "And staff has been inside if you wanted Kara to testify about what she saw if that would be helpful."

Mr. Horowitz said, "I have a more basic question for you."

Mr. Brown said, "Sure."

Mr. Horowitz said, "Who are the shareholders in Noble Roman, Inc.?"

Mr. Brown said, "My understanding is just Mr. Afifi."

Mr. Horowitz said, "Just Mr. Afifi. So-- he signed it as 'Member,' not as 'President' or 'CEO.' So, owns 100% of the shares?"

Mr. Brown said, "That is my understanding."

Mr. Horowitz said, "Roman Gaid is in no way, shape or form—basically asking you to say this-- associated with the business, no one owes him money, or he is not a third party in between anything going on in that business in terms of the lease or the operation of the business? Roman Gaid is completely out of it?"

Mr. Brown said, "My understanding, the answer to your question Mr. Horowitz is 'Yes.' That is correct. As I sit here before you that is my understanding. I have no knowledge of money owed or back room, off-paper deals. I have no knowledge of any of that."

Mr. Horowitz said, "Let's be clear and try to be general. I have in the eighteen years that I have been on this board have never ever seen a business that ignores the law, ignores the conditions that we've laid down, and does whatever it pleases no matter how many times they have been told not to. The idea that the owner put in that cooler even though the lease says 'Hey, you give me so much a month and I don't touch the business.' We have heard one lie, one piece of nonsense after another year after year after year. I'd say more in this business than all the rest of the businesses and chicken coops and 20,000 individual dwelling units in this City combined. Okay? So we have very, very little reason confident that anything that we allow—anything we permit-- will be lived up to. I would like you to explain to us why-- since we've got Mr. Afifi here who has worked for this business for nine years—why we should believe that this business will now comply with our laws; with our rules; with common decency; commonsense; treatment of the outside of the business as the owner's responsibility. I remember Roman Gaid specifically saying it's outside my business. What can I do? The neighborhood deserves a business that will show some responsibility and engagement with the community. I understand it's a difficult business and I understand that he probably nets three cents a gallon on the gas and why he needs a store. But what we need to understand is why we should believe that anything is going to get better."

Mr. Brown said, "Thank you. I'll answer the best I can. This is a change in ownership. I know he's been associated with the business for some time but he is now the owner. Mr. Gaid is not involved anymore. What Mr. Gaid represented to this Commission even though my firm worked for, represented the business at the time, I think Mr. Afifi understands that the outside is his responsibility and the business is his responsibility. He's demonstrated that by addressing the landscaping just recently, and again, I've photos of that. Additionally the cameras. His conduct is stronger than his word and I think he's taken certain steps—his

conduct demonstrates that he will continue to take those steps to make sure he can own the business that is harmonious in the neighborhood.

Mr. Rink said, "And you say that on one hand but on the other hand I understand there is testimony that he is currently using illegal space. That's conduct right there. That he's using the illegal space. He's doing that. So, unless you can... Do you want to talk to him about that? You just said we need to follow the fact that he has conduct that is stronger than his word. And the conduct that I understand attributable to him, is that he is using illegal space in the building. If you want to throw anything out, I will never throw anything out. The neighborhood deserves immensely more than what this property has given us as the City and as the residents of that neighborhood. So I fail to see your logic of conduct more than word when you don't want to ask your client if he using illegal space and we have testimony that he is using the illegal space."

Mr. Brown said, "I understand that there's been testimony, too."

Mr. Mattox, Jr. said, "When his client purchased this building, excuse me-- when he signed his lease to rent this building-- did he take a look at the Conditional Use Permit at the time?"

Mr. Brown said, "No, he did not. Mr. Afifi does not read or write English very well; it's not his first language. So 'no,' to answer your question and to even go further, while he was there-- or associated with-- the business during this prior litigation, I mean he was, my understanding was he did not testify in Court proceedings and that his extent of his involvement was that he went down to the courthouse of the Court of Common Pleas, possibly under subpoena, but he sat outside the courtroom for several hours one day and then that was it. He was never called to testify. That was the extent of his involvement with the prior litigation. He explained to me that he was not aware of the certain requirements or restrictions rather imposed by the Conditional Use Permit and that would have been handled by Mr. Gaid back when those things were occurring."

Mr. Mattox, Jr. said, "I guess my understanding is at the time your client purchased this building—this business, I apologize-- he did not take a look at the existing Conditional Use Permit that was in place for this business. Is that what you're stating?"

Mr. Brown said, "I am stating that if he did, he didn't understand it. He doesn't read or write English."

Ms. Rothenberg said, "I just—while the applicant is still here in case he disagrees with me—the applicant's representative—just-- wanted to make a couple of factual points just to clarify things that have been said tonight. As you all may remember, this was originally on the agenda for August and then was revoked..."

Ms. Hamley O'Donnell interjected, "...withdrawn..."

Ms. Rothenberg said, "...withdrawn—sorry—was withdrawn by the applicant at that time, which means that the applicant at that point was illegally using it, because they had already done the expansion. So within a matter of days after the August meeting, the City issued a Zoning Violation Notice and that Zoning Violation Notice references penalties for violating the Zoning Code and they include criminal penalties. I know there's been a lot of talk about criminal in nature and you might have been confused. That's where that's coming from because that's what the Zoning Code says. That's one thing I wanted to make you guys

aware of. The second thing I wanted to let you know was that the applicant's representatives got the packet the same time that you did and that the City has received no public records requests from the applicants from that receipt or any public records request that we did receive from them have been responded to. If there was more information that they wanted to make their case, they had ample time to make requests. And also I did want to ask the you, Mr. Brown, if you wanted—you have a stack of papers—did you want anything into the record tonight?"

Mr. Brown said, "I did, thank you. Before I do that I did want to clarify the previous application. It was not identical—not a mirror image of the one before the Commission now. There was a difference. The previous application requested a permit to convert service bays into a restaurant-type situation where sandwiches would be prepared and sold and that application was withdrawn. This application, though similar, is not a mirror image. It merely requests permission to expand to the other 2/3rds of the building. We're not looking to put deep fryers and sinks and a restaurant into the other 2/3rds of the building. With respect to the pictures, I appreciate that. Thank you. These are the pictures I sent earlier today.

Mr. Mattox, Jr. said, "I also have an additional question..."

Ms. Hamley O'Donnell said, "Are these different?"

Ms. Rothenberg said, "Are they copies?"

Mr. Brown said, "They are just copies."

Ms. Hamley O'Donnell said, "Oh; I see these are multiple copies."

Ms. Rothenberg said, "Can you do me a favor, Kara? Can you look at those pictures first and confirm that those are the ones you already saw and you already testified still don't live up to the landscaping plan.

Ms. Hamley O'Donnell said, "Sure."

Ms. Rothenberg said, "And the other thing—while she's doing that—are you 100% sure—your probably one chance to do it—is there anything that you want your client to testify under oath?"

Mr. Brown said, "Not at this time. Thank you."

Mr. Mattox, Jr. said, "I do have an additional question. To your knowledge does your client currently understand the Conditional Use Permit?"

Mr. Brown said, "That was a good question. I'm not sure.

Ms. Rothenberg said, "You can ask him if you wanted to. He sitting right there. The violation notice would have gone to the applicant as well as their representatives.

Mr. Mattox, Jr. said, "Do you have an approximate date of when that notice was sent out—just out of curiosity?"

Ms. Rothenberg said, "It took longer than I wanted it to. Where are the minutes? Does anyone have the August minutes around them? What was the date of that?"

Mr. Mattox, Jr. said, "...eighth, August eighth..."

Ms. Rothenberg said, "August eighth, I think it took two weeks. Do you have a copy?"

Mr. Brown said, "I do."

Ms. Rothenberg said, "What is the date on that Notice of Violation?"

Mr. Mattox, Jr. said, "And is there a copy of the Notice that he received? I'm just curious."

Ms. Rothenberg said, "I didn't think to bring it because the truth is that Violation would be sort of mooted by today if you were to move forward and if not, it's a sort of [unintelligible] issue. I didn't think to bring it."

Mr. Brown said, "It only lists the date of the inspection that occurred, so I do not have the date..."

Ms. Rothenberg said, "I think it was about two weeks after we met."

Mr. Mattox, Jr. said, "I guess my question is then, your client – and correct me if I'm wrong—but it appears that a lot of the reasoning behind some of this is because: a) it happened prior to him taking over the business; and b) there is an understanding gap of the paperwork-- is that what I'm gathering—that he received in terms of the Conditional Use Permit?"

Mr. Brown said, "I certainly would agree that a lot of what's been discussed occurring prior to his ownership. I'm quite clearly putting a lot of emphasis on that. There has been a lack of understanding as far as what is being required or requested."

Mr. Mattox, Jr. said, "So if something was to be approved tonight, what's to say that he would understand that? What has been put in place to ensure that he understands the rules surrounding the Conditional Use Permit, if he didn't understand the one he had when he purchased the business?"

Mr. Brown said, "I don't think that he had the benefit—and I actually know that he didn't really have the benefit-- of counsel that is going to explain to him the terms of the Conditional Use Permit or what that entails."

Mr. Rink said, "Wait; did I misunderstand that? Did you just say that—say that again because I don't think I followed..."

Mr. Brown said, "...the time he purchased the business, I don't believe he had independent counsel."

Mr. Rink said, "Okay. So when did he engage you?"

Mr. Brown said, "That—I don't want to get into that."

Ms. Rothenberg said, "But you were here in August."

Mr. Brown said, "Yes."

Ms. Rothenberg said, "We know he was here in August."

Mr. Rink said, "Okay. Have you ever explained the Conditional Use Permit to him?"

Mr. Brown said, "Again, I don't want to get into those types of communications... respectfully."

Mr. Rink said, "Okay. That's fine."

Mr. Cobb said, "Ready to move on? Anyone here from the public that wants to comment? [Recognizing that a person in the audience signaled her interest, he asked] Were you here earlier to take the oath or affirmation?"

Ms. Rothenberg said, "Don't worry, I'm still here. Do you swear or affirm that the testimony that you are about to give to the Planning Commission is the whole truth and nothing but the truth?"

Mr. Brown said, "Would you like me to move."

Ms. Rothenberg said, "Yes. Probably, since you can't cross examine."

Ms. Hamley O'Donnell said, "Mam, please state your name and address and that you took the oath, please."

Karen Lash said, "My name is Karen Lash. I live at 3883 Monticello and I just took the oath. I have lived in my house for 26 years. I can't believe that gas station that you have allowed that gas station to continue to be open. That gas station has had more violations set against it and yet you let this place stay open. The counsel brought you a ridiculous argument that all these Police calls have nothing to do with the merchandise. Well no, they don't. But that's the last thing that that corner needs is more liquor being sold. The place is disgusting. You saw in the pictures the floor is filthy. Could you imagine buying a sandwich there? I don't think so. That's just what the neighborhood needs is more liquor. I live within sight distance of that corner. I see all the cops that are there. I drive by it every day. I see the people lingering. I won't go there at night. This is my neighborhood and I won't go there at night. I see cops there all the time. One night I was coming home—there must have been six or seven cop cars with the lights flashing at the corner. I'm kind of brave or stupid, but I walked down to the corner to try and find out what was going on and the cops said I think you should turn around and go back home. I mean-- plus the bars that they claim are keeping their establishment safe makes it look like we're in the ghetto. I'm sorry if anybody's offended-- but I don't mean to offend anybody-- but it looks terrible. There's nothing welcoming about that place. They talked about having done landscaping. I don't know what significant landscaping they've done because I haven't noticed a vast improvement. The gas station diagonally across the street—the man who owned it was amazing. He kept such an eye on that station. He would plow the snow the entire pavement of the gas station as well as in front of the inside of the little bus stop with the little shelter. Even that area inside the shelter, he had it shoveled. So, the point is that he took ownership, he really cared about the place, he took care of it, he was always painting the trim around the bases. I've used that gas station very sparingly. They'll let you put your credit card in to pay for your gas, but you can't get a receipt. You have to go inside to get it and there's always an 'Oh. We're out of paper. Oh or this. Oh or that.' They don't even have machines that are properly functioning. I cannot implore upon you enough, I mean

thankfully the recommendation was that you not go forward with it. Not only do I say please do not with it, please somebody finally close it down or get an owner that will care about the place, clean it up, and make it a valuable part of our community because it is not and it's basically been this way only progressively worse in the 26 years that I've lived there. That's the truth."

Mr. Cobb said, "Thank you. Anyone else from the public? Is there anyone that wants to make a motion?"

Ms. Hamley O'Donnell said, "Can I interject real quickly? Liz asked me to that confirm that the Exhibit One and Exhibit Two that he sent me earlier today and that we have shared with you just now that the landscaping is still not in keeping with the approved landscape plan. As far as the security cameras, all I can see in the pictures are that the security cameras there. So I don't have an opinion one way or the other on that.

Mr. Cobb said, "Okay. Anyone want to make a motion? Does anyone want to make a motion or have discussion? That would be the appropriate time."

Mr. Rink said, "I am happy to make a motion. Sure. I will recommend that we deny it and we also request that they restore the building to the original floor plan—based on all the testimony I heard and the lack of testimony from the applicant -- and then that they also bring up the landscaping to what is code as well. I'd like all that in the motion.

Mr. Cobb said, "Well, okay. Is that going beyond our scope?"

Ms. Rothenberg said, "I think just because—just so you know, Jeff—so if you deny the motion today, and... the existing conditional use permit is in place-- so that's where the landscaping should be taken care of."

Mr. Rink said, "...and the floor plan?"

Ms. Rothenberg said, "...and the floor plan."

Mr. Cobb said, "But does that need to be brought before us in respect to a claimed violation of that Conditional Use Permit? We're here tonight on the application?"

Ms. Rothenberg said, "...here tonight only on the application. Usually I could let you also revisit the old one but because of the Court Order in place, it's a little bit tricky. So we should really just be looking at the application before you tonight."

Mr. Rink said, "Then I will deny the—I will make a motion to deny the application before us tonight based on all the testimony I've heard and the lack of testimony from the applicant..."

Mr. Cobb said, "[speaking to Ms. Rothenberg for rules of order]...then a second and any discussion?"

Ms. Rothenberg said, "So the motion is for denial and then now you're asking for a second and, Jeff, you were going to state the reasons why you are making that motion or voting the way that you're going to vote during the discussion period."

Mr. Cobb said, "Is there a second?"

Mr. Gaynier said, "Yeah. I'll second."

Mr. Cobb said, "Okay. Discussion. Now if you have something you wanted..."

Mr. Rink said, "I appreciate the sergeant's testimony, and hours and work. Thank you for that. I empathize and am sympathetic to the neighbors, and am truly, truly sorry that you have to deal with that. And then, I feel like we got very little information from the applicant. Certainly nowhere enough information that gives me any—any-- comfort that this property is at all changing. So, I am very comfortable in my motion to deny this."

Mr. Gaynier said, "I'd like to add a comment if I may. Mr. Brown, you've made a presentation where you've implied that Mr. Afifi—due to the language barriers and so forth—didn't really understand what was going on. Yet he's been associated with the property since 2009 and I believe he knows exactly what's going on and the plan all along has been to basically act without authorization consistently from day one. And I'm not convinced that he was not following that same methodology when he leased this business and leased the property going forward. So I'm not convinced that this is a case of just not understanding. I think it's a willful intent to deny and defy the ordinances and the Conditional Use Permit as laid down previously on multiple occasions by the City of Cleveland Heights and which also went into litigation that he was quite aware of in the past. To claim that he just didn't understand I think is ludicrous and I think as a resident just testified, it's time enough that compliance happen or this business needs to go."

Mr. Mattox, Jr. said, "I would also agree with that. In my humble opinion, the responsibility of understanding a Conditional Use Permit rules and regulations in the City of Cleveland Heights falls solely back on the owner of that business. When he purchased that business in January, he should have been very clear. That responsibility isn't on anyone but the owner of that business. Since January there have been additional issues that have come up after he has owned it that directly contradict everything that was put into the Conditional Use Permit. I'm not understanding how that responsibility will be placed on anyone but the owner of that business. It's his responsibility to review all of the paperwork, understand how to operate that business in the community. It's his responsibility to know what's going on. And even if he didn't, he worked there since 2009. So unless he was in a broom closet, I'm quite confused on what he did not see, or what he didn't hear, or didn't understand."

Mr. Cobb said, "Any other comments? I, too, agree with the other members here. Mr. Afifi has been associated with the business since 2009. He knew or should have known of the Conditions under the prior Conditional Use Permit and I believe had an obligation to follow those. To come before us with a new Conditional Permit I think he needed to have clean hands to do that. And I think it is obvious that he did not. Expanding this business into additional service bays with merchandise will clearly increase the customers that are coming to that business. And I believe that will result in an increase in complaints and Police calls. I pulled out from one of the exhibits just the Call Reports from 2018. And there's six double pages of them and I think it's a significant number of complaints for this business. And I'm limiting it to just 2018 since Mr. Afifi says he's only been in control of the business since then. I believe it does matter who is running the business and they need to be responsible for what goes on the grounds of that business. And I think in that respect, Mr. Afifi has failed, particularly knowing that this is a problem location and there have been numerous complaints about it. I think it required a super level of diligence for him to have followed in order for him to come to us and ask to expand that business with a Conditional Use Permit. I think I cut you off. Sorry about that. Go ahead."

Mr. Horowitz said, "Actually you mentioned something I was going to. The list of complaints that was the 602 Police Calls over roughly ten years. So that was roughly 60 a year. And I thought this year, how's it gone? Let's skip the first three months because he was just taking over. But from April 1 to September 27, just under six months, 46 calls—which would be a rate of 90 to 100 for the year. So, actually, it was up from previous years, so I don't know if that answers the question about how was expanding it related to more Police Calls, but things clearly have not gotten better for the last number of months. I sympathize with their being a new owner. I don't know what to tell you. It's been pulling teeth to get anything by way of compliance with this business let alone going over and above. I'm not sure where to go on this, but the business is a problem."

Mr. Cobb said, "Any other comments?"

Mr. Howe said, "I am obviously voting to deny as well, based on—I don't want to repeat everything the other Council members have said, but—I'm in total agreement with everything that has been stated so far.

Mr. Cobb said, "Okay. Let's call it for a vote. Everyone in favor of the motion denying the applicant."

Denied 6-0.

Project No. 18-25: Noble Gas, LLC, 2603 Noble, C2 Local Retail, requests expansion of conditional use permit to convert two service bays into merchandise sales area/mini mart in conjunction with existing gas station per Code ch. 1111, 1115, 1131, 1151, 1153, 1161, 1163 & 1166.

Ms. Hamley Donnell asked the staff report exhibits and PowerPoint be made part of the public record. She went to state the location of the service station, in the C-2 local retail district and gave description of the surrounding area. Mrs. ODonnell explained to the Planning Commission that since 1941 the gas station has been present on this site and has long operated as a 6-pump gas station with three auto service bays and 300 s.f. retail area. Cal. No. 689, March 1971: Whitehead/Likovic upgrade of manual car washing equipment denied.

Cal. No. 1433, December 1980: Ronald Serragoio/Shell service station granted variance to permit informational signs on the lower part of the pumps.

Cal. No. 2689, September 1997: Ron's Noble Shell Service granted variance to permit fuel pumps 15'-6" to 17' from right-of-way, canopies 6'-6" to 8' from right-of-way, and installation of 4' wide landscape buffer. An approved landscape plan was included.

Cal. No. 3388, December 2015: Ron's Noble Shell Service variances to convert auto repair bays to accessory retail were denied.

Proj. No. 17-15, June 2017: Noble Gas LLC/Husam Abdelqader was granted a conditional use permit to operate a three-pump gas station and maintain 300 s.f. sales areas with the following conditions:

1. This use shall not be injurious to the use and enjoyment of other properties in the immediate vicinity or create a nuisance for adjacent properties;
2. The applicant shall work with staff to resolve any complaints from neighbors;

3. Any expansion of the use, including increasing the retail space beyond 300 s.f., and/or addition of auto repair, will require the approval of the Planning Commission and required variances from the Board of Zoning Appeals;
4. Only staff shall be permitted in the storage area;
5. Any exterior changes, including signage, shall require the approval of the Architectural Board of Review;
6. Applicant shall submit a landscape and screening plan for Planning Director approval which shall be installed by October 1, 2017, and maintained per the approved plan;
7. The only services permitted to be performed on a vehicle shall be the dispensing of fuel, oil, air and windshield wiper fluid;
8. The location, display or storage of rental trailers, automobiles, trucks or other rental equipment on the premises is not permitted;
9. No merchandise, except fuel and oil, may be stored or displayed outside the building;
10. Except while being serviced at a pump island, no vehicles shall be parked between the pump setback line and the front property line; nor on a corner lot shall any vehicles be parked between the pump setback line and the property line on either of the intersecting streets. A vehicle parked in violation hereof during the time such station is open for business shall be presumed to have been so parked with the knowledge and consent of the operator of that station;
11. No junk, inoperative or unlicensed motor vehicles will be permitted to remain on the property for more than forty-eight (48) hours; and
12. All required construction and installation of the use shall be completed within 18 months of Planning Commission approval.

Noble Gas, LLC requests to convert two service bays along Noble Road into merchandise sales area/mini mart in conjunction with existing gas station and to use Monticello Boulevard service bay as a parking space. Any expansion or change of the use requires a new conditional use permit. Proposed hours of operation are 6 a.m. until 12 midnight.

In addition to gasoline, they currently sell convenience snack items and do not currently sell, nor do they plan to sell, alcohol or lottery tickets.

The current Conditional Use Permit allows retail sales only in the 300 s.f. southwest corner of the building and the applicant uses the other portions of the building for storage. Staff has confirmed this is the current operation.

Initially staff had requested that the applicant close one of the existing curb cuts, but after discussion with the Police Chief, it has been determined that such closure could result in traffic issues and reduced safety so we are no longer recommending closure of any of the curb cuts.

The C-2 Local Retail District's stated purpose is for "operation of small neighborhood commercial establishments and to concentrate new retail businesses in buildings that typically locate side by side in order to create and encourage pedestrian activity." Auto uses are no longer permitted in the C-2 Local Retail District; however this is a prior non-conforming use and may continue as a conditionally permitted use. An auto-oriented business with gasoline sales needs to be well maintained with ample landscaping to not disrupt pedestrian activity and to not be detrimental to nearby residents or businesses.

The gas station/mini mart does not have a history of excessive police calls and should not be detrimental to or endanger the public health, safety, moral comfort and general welfare. From 2009 until the present, police have been called to this site 183 times for suspicion,

suspicious person, assault, disturbance, breaking and entering, juvenile complaints, disorderly conduct, theft, alarms, car lockouts, and other reasons.

The current site landscaping and screening is not in accordance with the approved landscape plan. There are missing plants, weeds, and unscreened dumpster. The Zoning Code now requires that all commercial buildings provide windows along at least 60% of their lineal frontage at street level to allow people to see and be seen for passive security and to encourage pedestrian activity and district vitality. Existing windows and glass overhead doors would allow visibility but some are currently blocked by shelving, coolers and brown paper. The current building and site character are not harmonious and appropriate in appearance with the existing and intended neighborhood character. The applicant intends to move merchandise away from windows if the expansion is approved. If expansion is approved, the location of merchandise and signage in relation to windows shall maintain visibility to contribute to passive security.

The current operation is not injurious to the use and enjoyment of other property in the immediate vicinity and does not substantially diminish and impair property values within the neighborhood. Residents of neighboring properties have been notified of this public meeting and are invited to comment on the applicant's proposal.

The site is small; however, staff and the Police Department have not seen traffic congestion caused by automobiles waiting to enter this site. As such, the applicant has adequate measures to provide ingress and egress designed to minimize traffic congestion in the public streets. If the addition of expanded retail caused issues, their conditional use permit could be reviewed and/or revoked. Additional retail space would bring more customers and would require additional delivery trucks, further complicating the small parking lot. Employee parking, gas pump parking, customer parking, delivery truck parking, and gas delivery could create conditions that could be worsened if retail sales intensified, and could further limit ingress and egress, causing traffic congestion in the public streets. The applicant should explain how a garbage truck will load the dumpster, where delivery vehicles will park and unload, and how the gas truck will navigate the site to fill the underground storage tanks on the building's south side if the parking lot is full.

The number of police calls to this site is not atypical for gasoline station/retail and it is not detrimental to the economic welfare of the community by creating excessive additional requirements at public cost for police. A representative of the Police Department will attend the meeting to present evidence. There is minimal potential for future hardship on the conditional use that could result from the proposed use being surrounded by uses permitted by right that are incompatible.

Ms. Hamley O'Donnell noted that a new conditional use permit shall be required for any change, modification, enlargement or alteration of a conditional use and showed Code Section 1153.05(t) which lists the requirements for conditionally permitted gasoline stations

Ms. Hamley O'Donnell stated that staff recommends that the Planning Commission approve Noble Gas, LLC's proposed expansion to convert two service bays into merchandise sales area/mini mart in conjunction with existing 6-pump gas station at 2603 Noble Road, using the Monticello Boulevard service bay for parking and maintaining four curb cuts, as described in their application materials and this staff report, with the following additional conditions:

- 1) This use shall not be injurious to the use and enjoyment of other properties in the immediate vicinity or create a nuisance for adjacent properties;
- 2) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
- 3) The applicant shall work with staff to resolve any complaints from neighbors;
- 4) Any expansion of the use, increasing the retail space, addition of auto repair, or change to the retail operation would require a revision to the Conditional Use Permit;
- 5) On or before November 15, 2018, applicant shall install parking lot striping, dumpster screening as required by Code, and landscaping as shown on October 11, 1997, approved landscape plan or alternate plan as approved by the Planning Director. Applicant shall maintain, weed, mulch and replace the landscaping and screening as needed;
- 6) Any exterior changes, including signage, shall require the approval of the Architectural Board of Review;
- 7) The only services permitted to be performed on a vehicle shall be the dispensing of fuel, oil, air and windshield wiper fluid;
- 8) The location, display or storage of rental trailers, automobiles, trucks or other rental equipment on the Premises is not permitted nor are for-sale vehicles to be parked on the Premises;
- 9) No merchandise may be stored or displayed outside the building;
- 10) Except while being serviced at a pump island, no vehicles shall be parked between the pump setback line and the front property line; nor on a corner lot shall any vehicles be parked between the pump setback line and the property line on either of the intersecting streets. A vehicle parked in violation hereof during the time such station is open for business shall be presumed to have been so parked with the knowledge and consent of the operator of that station;
- 11) No junk, inoperative or unlicensed motor vehicles will be permitted to remain for more than forty-eight (48) hours;
- 12) All refuse shall be kept or stored within the building, or be screened from view;
- 13) Applicant shall empty trash containers and dumpsters regularly and keep site free of trash and debris;
- 14) Hours of operation shall be 6:00 a.m. until 12:00 midnight; store must be closed and gas pumps must be turned off between the hours of 12:00 midnight and 6:00 a.m.;
- 15) Restroom shall be maintained in sanitary and working order for customers;
- 16) Applicant shall obtain Police Chief approval of, and adhere to, an operations and security plan;
- 17) Existing clear windows and clear glass overhead doors shall be maintained in keeping with the requirements of Code section 1131.075 and merchandise shall be located so as to maintain views inside the building. Window signage shall comply with Code chapter 1163;
- 18) Adequate measures will be taken to provide ingress and egress designed as to minimize traffic congestion in the public streets; and
- 19) All required construction and installation of the use shall be completed within 18 months of Planning Commission approval.

Mr. Cobb asked if there were any questions for staff and there were none. Mr. Cobb went on to ask if it was coincidental that both of these service stations are both on the agenda.

Kara Hamley O'Donnell stated yes.

Mr. Cobb asked that if they were to acquire liquor licenses will they need a Conditional Use Permit.

Ms. Rothenberg stated that would be subjective change, and they would need to come back for a new Conditional Use Permit. There is language with the documents that stated that. It's number four in the Staff Recommendation.

Mr. Cobb added that ignoring that the previous applicant had violated the current Conditional Use Permit, what are the three major differences between the two locations. He asked was it due the lack of a liquor licenses, management, and lack of police complaints.

Ms. Hamley O'Donnell said, yes, those are the difference between the two establishments. Plus this applicant is seeking approval prior to expansion of the service station.

Mr. Cobb asked was there were any additional questions and there were none. Mr. Cobb then asked for remarks from the Officer.

Sergeant Skok shared Exhibit A which is a sum of calls from April 2009 to September 27, 2018. He went on to say that this gives a breakdown of the calls, descriptions and total amount with in the specified timeframe and gave some details.

Mr. Cobb asked Sergeant Skok, based upon his experience and familiarity of the area, does he believe there is a substantial difference between the two areas.

Sergeant Skok said yes.

Mr. Cobb asked Sergeant was he comfortable with the City recommendation of approval the Condition Use Permit for Noble Gas, LLC at 2603 Noble.

Sergeant Skok stated he was there to present the facts, and based on that, yes, he was comfortable.

Ms. Rothenberg added that Ms. Hamley O'Donnell has spoken with Chief Mecklenburg, who is supportive that there is a significant difference between the two establishments, and she is in agreement with the approval for Noble Gas, LLC's Conditional Use Permit request.

Mr. Cobb asked was there anything further for the officer or if there was anything that he wanted to add.

Sergeant Skok said no.

Ms. Hamley O'Donnell confirmed that exhibits A, B and C are a part of the staff report and have been entered in to the public record.

Mr. Cobb asked if the applicant had anything that he wanted to add.

Mr. Baja introduced himself, stated the business address at 2603 Noble Road. He stated that the service station was at one point body shop, however it was closed due to space being limited. He then went on to explain that small retail space is why they are requesting expansion to help increase sales for the business.

Mr. Cobb asked if there were any question for the applicant. Mr. Cobb himself went on to ask Mr. Baja if he was on hand as owner of this establishment.

Mr. Baja said, yes, he spends between 6-7 hours a day at the service station.

Mr. Cobb asked Mr. Baja if was aware of the issued at the service station across the street from them and asked Mr. Baja what is his plan of action to ensure that the same issues do not arise at this establishment.

Mr. Baja stated that they have other locations within Cleveland and that is why they wanted to expand to the Cleveland Heights area. He stated that he and his brother both want to be a positive influence to the community and respect, as well as abide with, the laws and regulations of the City of Cleveland Heights.

Mr. Mattox, Jr. asked the applicant does he completely understands the regulations and conditions that are associated with the Conditional Use Permit if granted.

Mr. Baja said yes. He stated he will ensure that they follow all 19 conditions associated with the Conditional Use Permit.

Sam Arhahi, 2603 Noble Road, introduced himself and stated that is co-owner with brother, Mr. Baja, of the service station located at 2603 Noble Road. He stated they both are willing to obey the laws, regulations, conditions and uphold the standards of Cleveland Heights. Not only do they want to up hold those standards, but they are obligated by Shell Gas to hold their standards as well.

Mr. Cobb asked if anyone from the public wanted to comment.

Ms. Brenda May stated that she was very appreciative of the current owners and how they want to keep the area up; she went on to say how the past owners keep the property spotless. That there is a definite difference in how the properties are maintained; she expressed her concern for how the landscape hasn't been kept up and added that they need to step up their game in that regards. She then went on to speak about the amount of traffic that flows around the area and how the will the new addition affect the current issue. She concluded that she is hopping they will keep up with the improving the landscape as well as address all other possible issue pertaining to the traffic and its flow.

Ms. Hamley O'Donnell explained to Ms. May that site plan, which is Code conforming based on the amount of square footage they do have, will provide enough parking space per the code requirement. Ms. Hamley O'Donnell reassured Ms. May that the City will make sure that the landscaping is brought up to Code and that if they applied for a liquor license at a later date that the same people would be notified and it would be brought forth to Planning Commission.

Ms. Rothenberg added that there was a different party that was interested in purchasing this property and expanding the retail, and as a result of their proposed plans they needed a variance due lack of parking spaces. This went before Board of Zoning Appeals which was denied. So this property has been heavily and closely looks at by the Police Department in the course of the denial with Board of Zoning Appeals and this application currently.

Mr. Cobb asked if there was anyone else from the public that wanted to speak

Ms. Hamley O'Donnell pointed out to the public that Condition #5 on the Conditional Use Permit recommended that upon approval, by November 15, 2018, that they shall install parking lot striping, dumpster screening and landscaping in the approved plan or an alternate plan that can be approved by the Planning Director and they shall weed, maintain, mulch and replace landscaping as needed. If this isn't done by said date they can lose the right to operate the service station.

Ms. Rothenberg let the public know that if they still have concerns or feel that things haven't approved after November 15, 2018, to contact Kara Hamley O'Donnell.

John Lawory, Sr. introduced himself and stated that he lived at 3875 Monticello Blvd. and that his main concern is parking within the service station.

Ms. Hamley O'Donnell placed the site plan on the screen to give visual of the placement of the additional parking.

Mr. Lawory, Sr. thanked the Commission for the clarification.

Mr. Cobb asked if anyone from the public wanted to add anything and there were none. He then asked was there anyone who wanted to make a motion.

Anthony Mattox, Jr. motioned that Project No. 18-25: Noble Gas, LLC, 2603 Noble, be granted conditional use permit to convert two service bays into merchandise sales area/mini mart in conjunction with existing gas station per Code with the staff recommendations.

Leonard Horowitz seconded the motion which was approved, 6-0.

Project No. 18-22: United Temple Church, 14284 Superior, 'A' single-fam., requests conditional use permit for church per Code ch. 1111, 1115, 1121, 1151, 1153, 1161, 1163 & 1166.

Ms. Hamley O'Donnell showed photos of the Church and stated its location, she went on to say that this location is the oldest church within Cleveland Heights and is current landmark of Cleveland Heights and a part of the Mayfield Heights Historic District. She added that the property had been vacant for many years and a concern of the City whether or not it would be restored. She added that Pastor Jones is in the process of purchasing the property and will operate it as a congregation in keeping with the standards for Conditional Uses. The staff report lists the Standards for Conditional Uses.

Ms. Hamley O'Donnell went on to say that the church has never had parking which is a prior nonconforming use, but the staff commentary on the standards for conditional use is that this is keeping with the intent of the zoning code, no changes are provided to the building so that it is in keeping with the practices of the previous congregation and should not endanger the public health, comfort or welfare. A congregation should not diminish property values and their investment in the property will improve the neighborhood. There has never been on-site parking provided for this church, a prior nonconforming use. Like in many congregations, neighbors become accustomed to on-street parking on residential streets on Sundays, when church use is busiest. Some congregations use remote lots and shuttle congregants to services or coordinate with owners of nearby parking lots which are underutilized on Sundays. This could be considered if needed. Staff prefers any of these

options to losing housing or green space for parking that is needed only a few hours on Sundays. Institutions in residential districts need to be respectful of their neighbors and direct congregants parking on street to leave room for residents to exit their driveways. The applicant should consider hiring police officers to direct traffic for special events that draw high attendance.

Most of the sustainability guidelines are not pertinent to this application; however the first sustainability guideline encourages historic preservation and adaptive reuse of existing structures. Encouraging reuse of this Cleveland Heights Landmark is important to Cleveland Heights' sustainability.

Staff recommends that the Planning Commission approve a conditional use permit for United Temple Church to operate at 14284 Superior Road, as described in the applicant's materials and this staff report, with the following additional conditions:

1. This use shall not be injurious to the use and enjoyment of other properties in the immediate vicinity or create a nuisance for adjacent properties;
2. The applicant shall work with staff to resolve any complaints from neighbors;
3. Any exterior changes, including signage, shall require the approval of the Architectural Board of Review and Landmark Commission;
4. Existing landscaping shall be maintained or, if desired, a new landscape plan shall be approved by the Planning Director;
5. All required construction and installation of the use shall be completed within 18 months of Planning Commission approval.

Mr. Cobb asked if there were any questions for staff and there were none. He went on to ask if there was anything that the applicant wanted to add.

Ms. Hamley O'Donnell add that Reverend Jackson had meet with the Landmark Commission and had have received approval his proposed improvements.

Ms. Rothenberg swore in Francis Cluppa and Reverend Phillip Jones Jr. who introduced himself. He went on to speak about his longstanding history with the City of Cleveland Heights and the Cleveland Height School district. He stated that United Temple is a twenty year old organization with another facility on the east side of Cleveland. With the growth of the congregation, this is why they are seeking to expand to this location. Reverend Jones spoke of all the programs that he plans to bring to Cleveland Heights community through the opening of the church. Reverend Jones went to explain how they are in the process of improving the landscaping.

Mr. Cobb asked were there any questions for the applicant.

Anthony Mattox, Jr. went on to express his appreciation of the Reverend Jones and what he will bring to Cleveland Heights community.

Mr. Cobb asked if there were any further questions for the applicant.

Francis Cluppa introduced himself and stated that he lives at 2997 Hampshire Road and stated that was delighted someone wanted to take on the challenge of restoring the church. He stated his main concern at this time was the risk of fire in the event someone resides on the grounds as groundskeeper.

Reverend Jones reassured Mr. Cluppa that there will not be anyone living in the basement of the church because he is in the process of purchasing the house across the street for a groundskeeper of the church. That way someone is always close and available in case an issue arises.

Mr. Cobb asked if there was a motion on the floor.

Mr. Mattox, Jr. motioned approval of a conditional use permit for Project No. 18-22, United Temple Church, 14284 Superior Road, with the recommended staff conditions.

Mr. Rink seconded the motion which was approved, 6-0.

OLD BUSINESS

None.

NEW BUSINESS

None.

The meeting was adjourned at 9:55pm.

Craig S. Cobb, Chair

Richard Wong, Secretary